No. 52.

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Supreme Court of the United States,

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Filed Oct. 12, 1900.

OCTOBER TERM, 1900—No. 52.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE NEW YORK CLEARING HOUSE BUILDING COMPANY.

Plaintiff-in-Error,

against

EDWARD P. BARKER, THEODORE SUTRO AND JAMES L. WELLS, COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK.

TAXES OF 1897.

BRIEF FOR DEFENDANTS-IN-ERROR.

THEODORE CONNOLY,
JAMES M. WARD,
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(9810) MARTIN B. BROWN CO., Printers and Stationers, 49 to 57 Park Place, New York.

Supreme Court of the United States.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the NEW YORK CLEARING HOUSE BUILDING COMPANY,
Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York,
Defendants.

No. 52.
October Term, 1900.
Taxes of 1897.

Brief for Defendants in Error.

A writ of certiorari was duly sued out in the Supreme Court of New York pursuant to the provisions of the Tax Law, chapter 908 of the Laws of 1896, sections 250–251, and of the Consolidation Act, Laws of 1882, chapter 410, section 821, by the plaintiff in error herein to review the action of the Commissioners of Taxes and Assessments of the City and County of New York, in assessing the plaintiff in error upon its personal

property (p. 22) for the year 1897 in the sum of $236,683.

At a Special Term of the Supreme Court the writ was dismissed without opinion (p. 23). The relator having appealed to the Appellate Division of the Supreme Court, that Court affirmed the judgment of the Special Term without opinion (36 App. Div., 636, p. 25).

The relator appealed to the Court of Appeals of the State of New York from the order of affirmance of the Appellate Division of the Supreme Court, and that Court affirmed the judgment without opinion (158 N. Y., 709, p. 2).

The relator thereupon sued out this writ of error (pp. 28–30).

Statement.

A statement was filed with the Commissioners of Taxes and Assessments of the City and County of New York by relator showing its condition for purposes of assessment for the year 1897 (pp. 8–9, 19–20).

This statement alleged that the relator had personal property amounting to $29,953.99, and that its indebtedness amounted to $230,000.

The controversy between the relator and the Commissioners of Taxes and Assessments arose from the ownership by the relator of a parcel of real estate in the City of New York.

Under the Consolidation Act, Laws of 1882, chapter 410, section 814, which required that real estate be assessed at " the sum for which such property under

ordinary circumstances would sell," this parcel of real estate had been assessed by the Deputy Tax Commissioner assigned for that duty for the year in question at $600,000 (p. 919).

In the statement filed with the Commissioners by relator, already mentioned, the relator had stated the value of the real estate as being $600,000.

It appears by the return of the Commissioners (pp. 14-18) that the Deputy Tax Commissioner assessed the personal property, capital and surplus of the relator for the year 1897, the sum of $900,000.

And the return sets forth fully the method by which the result was reached.

It, among other things, states that it was alleged by the affidavit of the manager of the company, who is in no way asserted to be conversant with values of real estate, that the company had paid for the land the sum of $575,000, and had erected upon the plot a building at a cost of $461,728.66. That the building added nothing to the value of the land and the claim of the relator was that in determining the value of the gross assets of the relator that he substantially eliminated the structure from that consideration.

The Commissioners returned that the building in question is in the business part of the city, that they were entirely familiar with it and that they knew, as a matter of fact, that the building was not wholly devoted to the purposes of the relator, but that the Chase National Bank occupied a large portion of the building.

Therefore, the Commissioners rejected the statements submitted by the relator as being unsupported by proof and contrary to their knowledge.

And the Commissioners denied the allegations that the application of the law to the matter in question by the Commissioners rendered such law unconstitutional.

And the Commissioners further denied the statements in the writ and petition that the assessment was erroneous by reason of over-valuation or inequality, as is fully set forth in the return (pp. 17-18).

The case arose under the present Tax Law, Laws of 1896, chapter 908, which provides in section 12:

> "The capital stock of every company liable to taxation except such part of it as shall have been accepted in the assessment roll, or shall be exempt by law, together with its surplus profits or reserve funds, exceeding ten percentum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital under the laws of this state, shall be assessed at its actual value," (Laws of 1896, chapter 908, section 12).

It is claimed by the Commissioners that they in their action followed this statute, and that their action was in no wise illegal.

Of course they do not concede that the theory upon which they proceeded is the theory stated in the brief of plaintiff in error herein, or that their theory was other than that stated in their return.

The questions arising in this matter are substantially the same as those in the appeal of a similar title, No. 51 on the present calendar, and which is argued herewith, the only difference being caused by the amendment to the statute after the assessment which was made in a proceeding No. 51.

The questions in the two cases are the same, however, and the present case is, therefore, respectfully submitted on the argument contained in the brief for defendants in error in No. 51, argued herewith.

For the reasons therein stated the judgment should be affirmed.

THEODORE CONNOLY,
JAMES M. WARD,
Counsel for Defendants in Error.

Appendix.

STATUTES OF THE STATE OF NEW YORK.

Tax Law, Laws of 1896, chapter 908, section 9:

When real property is owned by a resident of a tax district in which it is situated, it shall be assessed to him.

Id., section 21:

They (the assessing officers) shall prepare an assessment-roll containing five separate columns and shall, according to the best information in their power, set down * * *

2. In the second column the quantity of real property taxable to each person, with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column, the full value of such real property.

Id., section 12:

The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

Consolidation Act, chapter 410, Laws of 1882, section 814:

It shall be the duty of the deputy tax commissioners, under the direction of the commissioners of taxes and

assessments, to assess all the taxable property in the several districts that may be assigned to them for that purpose by said commissioners, and they shall furnish to them, under oath, a detailed statement of all such property, showing that said deputies have personally examined each and every house, building, lot, pier, or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information, in detail, relative to personal property or otherwise, as the said commissioners may, from time to time, require. Such deputies shall commence to assess real and personal estate on the first Monday of September in each and every year.